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7 IN THE UNITED STATES DISTRICT COURT  
8 FOR THE EASTERN DISTRICT OF CALIFORNIA

9 CHRISTOPHER LEE JENKINS,

10 Plaintiff,

No. CIV S-04-2520 LKK JFM P

11 vs.

12 ARNOLD SCHWARZENEGGER,

13 Defendant.

ORDER

14 \_\_\_\_\_/  
15 Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action  
16 seeking relief under 42 U.S.C. § 1983. This matter was referred to a United States Magistrate  
17 Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local General Order No. 262.

18 On September 12, 2006, this action was dismissed for failure to state a claim upon  
19 which relief may be granted. Judgment was entered on the same day. On September 22, 2006,  
20 plaintiff filed a request for reconsideration of that order. On October 31, 2006, plaintiff filed a  
21 notice of appeal and a second motion for reconsideration.

22 The court will construe plaintiff's motions for reconsideration as a motion for  
23 relief from judgment under Fed. R. Civ. P. 60(b). Rule 60(b) of the Federal Rules of Civil  
24 Procedure provides in relevant part:

25 On motion and upon such terms as are just, the court may relieve a  
26 party or a party's legal representative from a final judgment, order,  
or proceeding for the following reasons: (1) mistake, inadvertence,

1 surprise, or excusable neglect; (2) newly discovered evidence  
2 which by due diligence could not have been discovered in time to  
3 move for a new trial under Rule 59(b); (3) fraud (whether  
4 heretofore denominated intrinsic or extrinsic), misrepresentation,  
5 or other misconduct of an adverse party; (4) the judgment is void;  
6 (5) the judgment has been satisfied, released, or discharged, or a  
7 prior judgment upon which it is based has been reversed or  
otherwise vacated, or it is no longer equitable that the judgment  
should have prospective application; or (6) any other reason  
justifying relief from the operation of the judgment. The motion  
shall be made within a reasonable time, and for reasons (1), (2),  
and (3) not more than one year after the judgment, order, or  
proceeding was entered or taken.

8 Fed. R. Civ. P. 60(b). "Motions for relief from judgment pursuant to Rule 60(b) of the Federal  
9 Rules of Civil Procedure are addressed to the sound discretion of the district court." Allmerica  
10 Financial Life Insurance and Annuity Company v. Llewellyn, 139 F.3d 664, 665 (9th Cir. 1997).


11 This action was dismissed for failure to state a claim because, despite being  
12 provided two opportunities to file an amended complaint, plaintiff failed to assert a specific  
13 constitutional deprivation. Plaintiff's motions for reconsideration do not address this failure;  
14 rather, plaintiff states that he requests to "amend his relief requested." (Motions at 2.)

15 Plaintiff has not shown grounds that require or justify relief from the judgment  
16 entered in this action. Accordingly, IT IS HEREBY ORDERED that:

17 1. Plaintiff's September 22, 2006 and October 31, 2006 motions for  
18 reconsideration are denied; and

19 2. The Clerk of the Court is directed to serve a copy of this order on the United  
20 States Court of Appeals for the Ninth Circuit.

21 DATED: December 21, 2006.

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24 LAWRENCE K. KARLTON  
25 SENIOR JUDGE  
26 UNITED STATES DISTRICT COURT